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**HOGAN & HARTSON**  
L.L.P.

March 2, 1998

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**BY HAND DELIVERY**

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

**Re: Docket PR No. 92-235**  
**Consolidate of Private Land Mobile Radio Services**

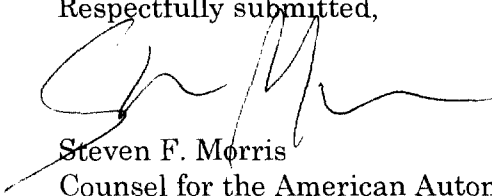
Dear Ms. Salas:

Today, on behalf of the American Automobile Association ("AAA"), the attached letter was sent to Chairman William E. Kennard.

I have hereby submitted two copies of this notice and the attachment for each of the referenced proceedings to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

  
Steven F. Morris  
Counsel for the American Automobile  
Association

Enclosures

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*BY HAND DELIVERY*

Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

**RE: PR Docket No. 92-235  
Consolidation of Private Land Mobile Radio Services**

Dear Chairman Kennard:

On behalf of the American Automobile Association (AAA), I am writing to clarify an apparent misunderstanding that has appeared in the trade press regarding a letter recently sent to you by Senator Conrad Burns and Senator Byron Dorgan. In that letter, a copy of which is attached, Senators Burns and Dorgan urge the Commission to revisit the treatment of automobile emergency services in connection with the above-referenced proceeding.

As you know, in the *Second Report and Order* in this matter, the Commission consolidated the Private Land Mobile Radio Services (PLMRS) into two pools: a Public Safety Pool and an Industrial/Business Pool. The Auto Emergency frequencies were placed in the Industrial/Business Pool, but AAA -- the frequency coordinator for the Auto Emergency frequencies -- was not provided the same level of control over frequency coordination as the coordinators for the "quasi-public safety" services identified by the Commission (Railroads, Power and Petroleum). In their letter, Senators Burns and Dorgan state that the Balanced Budget Act of 1997 recognized "the important public safety function" performed by emergency road services. Based on this finding by Congress, the Senators state that it "seems

Chairman William E. Kennard

March 2, 1998

Page 2

logical to us that the Commission ought to provide the same recognition of these services in how it classifies PLMRS in the industrial/business pool."

It has come to AAA's attention, through the attached report in this week's edition of *Washington Telecom Week*, that some parties to this proceeding view the Burns/Dorgan letter as seeking to classify emergency road services on a par with government public safety services, such as police and fire. While AAA's original Petition for Reconsideration of the *Second Report and Order* did advocate placing the Auto Emergency frequencies within the Public Safety Pool, AAA has since withdrawn this request. As AAA has stated in written *ex parte* filings, and in meetings with the Bureau and with each Commissioner's office, "AAA no longer is seeking to have the Auto Emergency frequencies placed in the Public Safety Pool. Rather, AAA is requesting only that it be given the same control over coordination as the coordinators for the 'quasi-public safety' services [within the Industrial/Business Pool] identified by the Commission." 1/

AAA believes that the Burns/Dorgan letter supports AAA's pending request that it be accorded similar treatment to railroads, utilities and pipelines within the Industrial/Business Pool, and does not revive the argument that emergency road services should be treated the same as government public safety services. AAA also believes the Burns/Dorgan letter highlights the urgent need for resolution of these issues. AAA's petition for reconsideration has been pending since May 1997, and we believe that further delay jeopardizes AAA's ability to provide the high level of service the public has come to expect. 2/

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1/ See PR Docket No. 92-235, Letter from Steven F. Morris, Hogan & Hartson, to Ari Fitzgerald, Legal Advisor to Chairman Kennard (December 15, 1997).

2/ On December 29, 1997, AAA filed a White Paper with the Commission that explained in detail the threat to AAA's ability to provide service caused by the *Second Report and Order*. See AAA White Paper, *The Need For "Safety" Treatment Of Frequencies In The Automobile Emergency Radio Service*, PR Docket No. 92-235 (filed December 29, 1997). As noted in the White Paper, another approach the FCC might take would be to restrict use of the current Auto Emergency frequencies within the Industrial/Business Pool to auto clubs and emergency road service providers. *Id.* at 15-16.

HOGAN & HARTSON L.L.P.

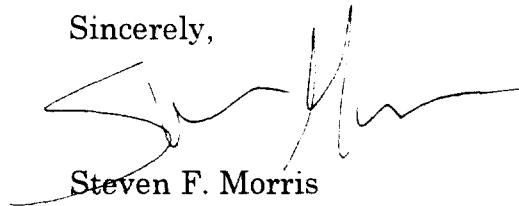
Chairman William E. Kennard

March 2, 1998

Page 3

We appreciate your consideration of AAA's views on this issue. Please do not hesitate to call should you have any questions with regard to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven F. Morris". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steven F. Morris

Counsel for the American  
Automobile Association

Enclosures

cc: Senator Conrad Burns  
Senator Byron Dorgan  
Commissioner Susan Ness  
Commissioner Harold Furchtgott-Roth  
Commissioner Michael Powell  
Commissioner Gloria Tristani  
Ari Fitzgerald  
David Siddall  
Kevin Martin  
Peter Tenhula  
Karen Gulick  
Daniel Phythyon  
D'Wana Terry  
Herb Zeiler  
Ira Keltz

# United States Senate

WASHINGTON, DC 20510

February 17, 1998

The Honorable William Kennard  
Chairman  
The Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Mr. Chairman:

We are writing to express our concern with the Commission's decision regarding Private Land Mobile Radio Services (PLMRS) and its adverse affect on emergency road services.

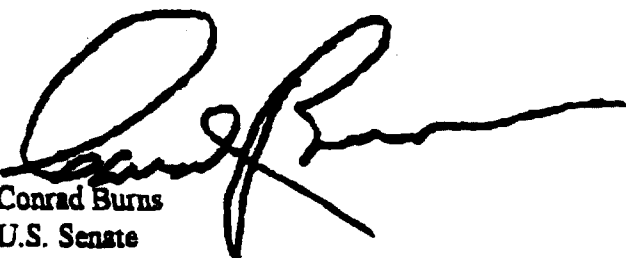
It has recently come to our attention that the Commission has decided to consolidate 20 services within the PLMRS into two broad pools: a public safety pool and an industrial/business pool and that the Commission placed the auto emergency frequencies in the later pool. We are concerned that the categorization of auto emergency services as industrial/business services will place a difficult burden on auto emergency services and adversely affect the ability of emergency road service organizations and other entities from providing the public safety function they provide.

Emergency road services would be harmed by the Commission's decision and we urge you to revisit how these kinds of services are to be categorized by the Commission. Emergency road services are an important public safety service which is often provided by non-public entities such as the American Automobile Association (AAA) and others. As you know, Congress provided for a specific exemption for emergency road services from spectrum auctions under the Balanced Budget Act of 1997 [cf. 47 U.S.C. 309(j)(2)(A) as amended]. This exemption was provided because Congress recognized the unique nature of emergency road services offered by non-public entities and the important public safety function these entities provide. It seems logical to us that the Commission ought to provide the same recognition of these services in how it classifies PLMRS in the industrial/business pool. The Commission's decision regarding these services fails to adequately consider the substantial public safety aspect of the services provided by non-public entities who provide emergency road services.

We urge you to reconsider this decision and we appreciate your consideration of our views.

Sincerely,

  
Byron L. Dorgan  
U.S. Senate

  
Conrad Burns  
U.S. Senate

## LOCAL, STATE GOVERNMENT LEADERS URGE DELAY IN CABLE FRANCHISING CASE

Local government leaders have asked the Federal Communications Commission to delay a decision on the impact of reselling cable on cable franchising because they have not had time to fully study the issue.

The FCC's Local and State Government Advisory Committee (LSGAC) issued a recommendation last week urging the FCC to delay a decision in the so-called ECI case regarding whether leasing cable infrastructure would effectively end the practice of franchising cable operators. LSGAC members believed that the FCC would rule on this issue by the end of the week, but FCC sources say that a decision has not yet been delivered to the commissioners. "It doesn't appear likely that [this issue] will be ruled on this week," an FCC source said.

Communities are concerned that a precedent will be set if the FCC grants the exception to franchise fees sought by ECI to offer cable services through leased lines in Meridian and East Lansing, MI. They fear communities will lose their ability to extract franchise revenues from entities they view as cable operators.

LSGAC's initial recommendation is for the FCC to deny the ECI claims. To grant ECI's petition "would create a giant loophole . . . A ruling that the leasing of infrastructure removes the provider of cable services from the definition of a cable operator would encourage cable operators throughout the country to set up legal entities to own the infrastructure, and other legal entities to lease the infrastructure and provide service to the consumer," LSGAC said in its recommendation.

The LSGAC complained in its recommendation that FCC staff had not alerted it to this issue. However, sources questioned this because national organizations representing LSGAC members apparently were aware that the FCC had said that this issue would be decided by the end of February. FCC staff had focused on so-called "preemption cases" to bring to LSGAC's attention. The ECI decision does not deal with preemption, so apparently FCC staff did not ask LSGAC for an opinion in a timely manner, sources said. In any event, FCC sources said, the national organizations were aware of the ECI petition and should have alerted LSGAC members that this was coming up.

LSGAC members were not independently aware of the ECI case because the initial comment period ended before LSGAC was created, sources said. LSGAC was created last year by then-FCC Chairman Reed Hundt to allow local officials a stronger voice in FCC proceedings. Local leaders felt prior to that time that they were shut out of the process because they are not located in Washington, D.C. "This case shows that we [local leaders] may still be out of the loop," one LSGAC member said.

## SENATORS PRESS FCC TO PLACE TOW TRUCK SPECTRUM IN PUBLIC SAFETY POOL

Two key senators have told the Federal Communications Commission that tow trucks and other for-profit emergency road services should be considered as public safety entities and thus get the advantages of unrestricted spectrum like police, fire and ambulance services. The FCC is currently consolidating 20 private radio services into two radio pools — public safety and business/industrial — in what is known as the reforming proceeding. The designation as public safety rather than business/industrial affords entities higher priority by the FCC and special protections such as a guaranteed exemption from auction.

Emergency road services believe that they should be considered public safety entities because of their value in assisting with car accidents. Emergency road services include the not-for-profit Automobile Association of America (AAA) and for-profit tow trucks.

AAA was successful last year in having Congress exempt its spectrum from auction by claiming it was a public safety entity. The FCC afforded a similar exemption to railroads, utilities and the petroleum industry, private wireless industry sources say. The FCC exemption gave these entities exclusive coordination over their frequencies. This is significant because an important part of the consolidation allowed various organizations to assign frequencies in the business/industrial pool.

The letter from Sens. Byron Dorgan (D-ND) and Conrad Burns (R-MT), chairman of the communications subcommittee, cites the AAA exemption from auction as congressional intent that emergency road services be considered public safety entities. Not so, congressional sources familiar with the exemption say. Burns and Dorgan stretch the definition included in the Balanced Budget Act (BBA) of 1997, these sources add.

The BBA language refers to not-for-profit emergency road service agencies such as the AAA. This is a crucial point, congressional sources said, noting the exemption was created for the small number of not-for-profit organizations, while there are many for-profit emergency road services. Many members were concerned about the so-called AAA exemption when it was adopted last year, congressional sources said. "These concerns seem to be justified," one congressional source said.

The letter was seen by many in industry as supporting a petition for reconsideration filed by AAA at the FCC. The petition would include AAA and other similar organizations in the category created for railroads, utilities, and the petroleum industry.

This petition has been opposed by the Industrial Telecommunications Association (ITA) on the grounds that

unless "you have a gun or a hose, you are not a public safety entity. Without this, it gets pretty confusing. Public safety is public safety and business/industrial is business/industrial," an ITA source said. ITA expects to shortly send a letter to both Burns and Dorgan expressing its concerns for the AAA exemption, ITA sources said. The letter will also be forwarded to the FCC, the sources added.

## **MCI ASKS FCC FOR EMERGENCY ACTION ON ACCESS . . . begins page one**

MCI is not the only entity to complain about PICCs. Indeed, the PICC issue has been teed up at the FCC by a host of players, including the Consumer Federation of America, the International Communications Association, the National Retail Federation, AT&T, Sprint, and the Competitive Telecommunications Association. MCI, however, is seeking "emergency" treatment of its request by the FCC.

MCI's emergency petition may or may not be handled any differently by the commission than the petitions filed by other entities seeking changes in the FCC's access rules, sources say. But the fact that MCI has given its concerns an "emergency" label "will no doubt spur the FCC toward a somewhat faster resolution of the problem," an industry analyst said.

The commission is being heavily pressed to do something about the PICC situation and other universal service-related matters prior to July 1. At that time, the agency has to come up with a more permanent way to make certain that enough money will flow into the new federal Universal Service Fund to pay for connecting the nation's schools, libraries and rural health care facilities to the Internet — a figure estimated to be near the \$3-billion mark.

As things currently stand, the FCC has allowed the interexchange carrier (IXC) industry for the first six months of this year to collect a mere fraction of the money identified by the Federal-State Joint Board on Universal Service as necessary to fund all the new requirements of the FCC's revamped universal service regime. Had the commission not made that temporary downward adjustment in expected collections by the IXCs, long distance companies such as AT&T, MCI and Sprint on Jan. 1 would have been forced to raise subscriber rates by as much as 15%, some analysts say.

This temporary delay in full implementation of the commission's new rules did not affect collection of PICCs, however. The addition of PICCs to subscribers' bills has resulted in about 5% overall increase in long distance rates.

The collection of PICCs is a particularly thorny problem for long distance companies. As MCI's top policy adviser Jonathan Sallet noted during a Tuesday meeting with reporters, PICCs are collected by IXCs but are then turned over to incumbent local exchange carriers (ILECs) to help support universal service requirements. Compounding the problem of collecting these fees is the manner in which they are supposed to be assessed.

Prior to Jan. 1, the IXCs were assessed access fees base on a per-minute usage structure. After Jan. 1, however, the FCC's new rules required PICCs to be assessed for each line presubscribed to the IXCs regardless of

### **LEGISLATION ON USF-RELATED ISSUES EXPECTED TO SOON SURFACE**

Legislation is likely to surface on Capitol Hill soon that will directly address the way Congress wants the Federal Communications Commission to tend to the nation's universal service needs, according to well-informed sources.

This bill, which could emerge within the next week or so, is expected to include specific language spelling out precisely how the FCC is to create funding mechanisms for the federal Universal Service Fund (USF) — language that will likely run counter to much of what the commission has already done in this area.

The anticipated bill will focus on how the commission is to go about meeting the 1996 Telecom Act's mandate of establishing policies that result in connecting the nation's schools, libraries and rural health care facilities to the Internet.

Thus far, the FCC's handling of the schools-libraries-rural health care issue has prompted the ire of a number of key congressional leaders, including that of Sen. Ted Stevens (R-AK), chairman of the powerful Appropriations Committee, and Sen. Conrad Burns, chairman of Commerce's communications subcommittee. Sources on Capitol Hill now say that the number of members who are beginning to raise concerns about this particular issue is rapidly growing on both sides of the political aisle.

In addressing what it believed to be the Telecom Act's intent on Internet connectivity for schools, libraries and rural health care facilities, the FCC created some non-profit corporations to oversee the administration of federal funds needed to subsidize this portion of the universal service program. Stevens and others in Congress immediately began asking questions concerning the commission's interpretation of the Act with respect to the USF matter.

Recently, the General Accounting Office (GAO) sent Stevens a report concluding that the FCC did not have the statutory authority to create the aforementioned non-profit corporations. This report, while being dismissed by Clinton Administration officials as vague and irrelevant, is expected to become the focus of a bi-partisan effort in Congress to rein in the FCC on USF funding mechanisms and administration, sources say.